

FILED

17 APR -5 AM 4:03

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARISSA GLOVER,

Plaintiff,

v.

CITIBANK, N.A.,

Defendant.

Case No.: 3:16-cv-01786-BEN-BLM

ORDER:

**(1) DENYING MOTION TO FILE
UNDER SEAL; and
(2) DEFFERING DEFENDANT'S
MOTION TO COMPEL
ARBITRATION**

Before this Court is the Motion to Compel Arbitration filed by Defendant Citibank, N.A. ("Citibank"). (Docket No. 12.) The motion is fully briefed. Citibank has also filed an unopposed Motion to File Documents Under Seal. (Docket No. 16.) The Court finds the Motions suitable for determination on the papers without oral argument, pursuant to Civil Local Rule 7.1.d.1. For the reasons set for below, the Motion to Compel Arbitration is **DEFERRED**, and the Motion to File Documents Under Seal is **DENIED**.

BACKGROUND¹

Plaintiff Marissa Glover alleges that, "[i]n or about 2015, an imposter opened an account with Best Buy that was financed by Citi" on her behalf without her knowledge or

¹ The following overview of the facts are drawn from the allegations of the Complaint. (Docket No. 1.) The Court is not making findings of fact.

1 consent. (*Id.* at ¶ 36.) She first learned of this account in mid-2015 (the “7001
2 Account”). (*Id.* at ¶¶ 26, 36.) Plaintiff subsequently conducted an investigation and
3 determined she was the victim of identity theft. (*Id.* at ¶ 27.) She unsuccessfully
4 attempted to resolve the 7001 Account informally with Citibank. (*Id.* at ¶¶ 28, 35.)
5 Even though she was attempting to resolve the issue, Citibank allegedly harassed Plaintiff
6 with telephone collection efforts, demeaning collection letters, and inaccurate reporting to
7 the credit bureaus. (*Id.* at ¶ 29.) As a result, Plaintiff claims she suffered various
8 damages, including “attorneys’ fees, loss of credit, loss of ability to purchase and benefit
9 from credit, increased costs for credit, mental and emotional pain and anguish, and
10 humiliation and embarrassment of credit denials.” (*Id.* at ¶ 30.)

11 DISCUSSION

12 I. Motion to File Documents Under Seal

13 Citibank moves to file under seal the Declaration of Walter N. Golden (“Golden
14 Declaration”) and its accompanying exhibits, which were filed with Citibank’s Reply in
15 support of its Motion to Compel Arbitration. (Docket No. 16.) Citibank explains that it
16 seeks to seal the Golden Declaration and exhibits because they contain Plaintiff’s
17 personally identifiable information. Although Federal Rule of Civil Procedure 5.2
18 normally requires that personally identifiable information be redacted, Citibank asserts
19 that it was necessary to provide the document without redaction because the information
20 supports the key issue in its Motion to Compel Arbitration. Plaintiff does not oppose the
21 Motion to File Documents under Seal, but instead filed an objection to the Golden
22 Declaration and exhibits on the grounds that they should not be considered having been
23 brought to the Court’s attention for the first time in Reply. (Docket No. 18.)

24 In *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978), the Supreme
25 Court recognized “a general right to inspect and copy public records and documents,
26 including judicial records and documents.” *Id.* at 597. The main reason for this general
27 right is to accommodate “the citizen’s desire to keep a watchful eye on the workings of . .
28 . government.” *Id.* at 598. However, the Supreme Court also stated that “the right to

1 inspect and copy judicial records is not absolute.” *Id.* at 589. “Every court has
2 supervisory power over its own records and files, and access has been denied where court
3 files might have become a vehicle for improper purposes,” such as “to gratify private
4 spite or promote public scandal,” or to serve as a source of “business information that
5 might harm a litigant’s competitive standing.” *Id.* (internal citations omitted).

6 Except for certain documents “traditionally kept secret,” federal courts begin a
7 sealing analysis with “a strong presumption in favor of access to court records.” *Foltz v.*
8 *State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). A party seeking to
9 seal a judicial record then bears the burden of overcoming this strong presumption by
10 meeting the “compelling reasons” standard. *Id.* That is, the party must “articulate[]
11 compelling reasons supported by specific factual findings,” *id.*, that outweigh the general
12 history of access and the public policies favoring disclosure, such as the “public interest
13 in understanding the judicial process,” *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th
14 Cir. 1995). “The mere fact that the production of records may lead to a litigant’s
15 embarrassment, incrimination, or exposure to further litigation will not, without more,
16 compel the court to seal its records.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d
17 1172, 1179 (9th Cir. 2006). “Simply mentioning a general category of privilege, without
18 further elaboration or any specific linkage with the documents, [also] does not satisfy the
19 burden.” *Id.* at 1184. A party’s failure to meet the burden of articulating specific facts
20 showing a “compelling reason” means that the “default posture of public access
21 prevails.” *Id.* at 1182.

22 The “compelling reasons” standard applies fully to dispositive motions, such as the
23 one at issue here. *Id.* at 1179. In turn, the court must “conscientiously balance[] the
24 competing interests” of the public and the party who seeks to keep certain judicial records
25 secret. *Foltz*, 331 F.3d at 1135. After considering these interests, if the court decides to
26 seal certain judicial records, it must “base its decision on a compelling reason and
27 articulate the factual basis for its ruling, without relying on hypothesis or conjecture.”
28

1 *Hagestad*, 49 F.3d at 1434 (citing *Valley Broadcasting Co. v. U.S. Dist. Ct.*, 798 F.2d
2 1289, 1295 (9th Cir. 1986)).

3 As explained above, Citibank is required to “present ‘articulable facts’ identifying
4 the interests favoring sealing, *and* to show that these specific interests overc[o]me the
5 presumption of access by outweighing the ‘public interest in understanding the judicial
6 process.’” *Kamakana*, 447 F.3d at 1181 (emphasis in original) (internal citations
7 omitted). Citibank fails to make this showing. Citibank asserts that it filed documents
8 containing personally identifiable information that is normally redacted because the
9 information was necessary to support its Motion to Compel Arbitration. However, the
10 only specific item noted in its Motion to File Documents Under Seal is Plaintiff’s
11 Driver’s License. Citibank has not presented any supporting declarations, specific
12 demonstrations of fact, or concrete examples of prejudice or harm that could result if
13 these documents are filed in the public record. Nor has Citibank identified what
14 information in these documents is considered privileged or sensitive. This is not the
15 particularized showing necessary to establish a “compelling” interest. Additionally, some
16 of the documents already contain redactions; therefore, it is unclear why the entire
17 documents need to be sealed now. Therefore, Citibank’s Motion to File Documents
18 Under Seal is **DENIED**.

19 **II. Motion to Compel Arbitration**

20 Citibank moves to compel arbitration asserting Plaintiff’s claims are subject to an
21 existing arbitration agreement between them. (Docket No. 12.) Citibank’s position is
22 that Plaintiff did in fact open the 7001 Account, and is thereby subject to its Card
23 Agreement terms, including the arbitration agreement. (Mot. at pp. 3-6.)

24 Section 2 of the Federal Arbitration Act (“FAA”) states that:

25 A written provision in any ... contract evidencing a transaction
26 involving commerce to settle by arbitration a controversy
27 thereafter arising out of such contract or transaction ... shall be
28 valid, irrevocable, and enforceable, save upon such grounds as
exist at law or in equity for the revocation of any contract.

1 9 U.S.C. § 2. Section 2 demonstrates “‘a national policy favoring arbitration’ of claims
2 that parties contract to settle in that manner.” *Preston v. Ferrer*, 552 U.S. 346, 352–53
3 (2008) (citing *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984)).

4 Under Section 3 of the FAA, where an issue involved in a suit or proceeding is
5 referable to arbitration under an agreement in writing, the district court “shall on
6 application of one of the parties stay the trial of the action until such arbitration has been
7 had in accordance with the terms of the agreement” 9 U.S.C. § 3. The language is
8 mandatory, and district courts are required to order arbitration on issues as to which an
9 arbitration agreement has been signed. *Kilgore v. KeyBank, N.A.*, 718 F.3d 1052, 1058
10 (9th Cir. 2013) (citing *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985)).
11 The role of the district court is “limited to determining (1) whether a valid agreement to
12 arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at
13 issue.” *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000).

14 Arbitration is a matter of contract, and a party “cannot be required to submit to
15 arbitration any dispute which he has not agreed so to submit.” *Tracer Research Corp. v.*
16 *Nat’l Envtl. Servs. Co.*, 42 F.3d 1292, 1294 (9th Cir. 1994). A court must determine
17 whether there is an agreement to arbitrate before ordering arbitration. *Wagner v. Stratton*
18 *Oakmont, Inc.*, 83 F.3d 1046, 1048 (9th Cir. 1996). In doing so, a court “should not
19 assume that the parties agreed to arbitrate arbitrability unless there is “clea[r] and
20 unmistakabl[e]” evidence that they did so.” *First Options of Chicago, Inc. v. Kaplan*,
21 514 U.S. 938, 944 (1995). Unlike determining the scope of the disputes covered by a
22 valid arbitration agreement, in the face of silence or ambiguity a court presumes the
23 parties intended a court to determine arbitrability. *Id.* at 944-45.

24 Here, Citibank asserts Plaintiff’s claims must be arbitrated because she entered into
25 a valid, enforceable arbitration agreement. To support this contention, Citibank attached
26 to its Motion an employee declaration and supporting exhibits, including the arbitration
27 agreement and some of the 7001 account information. (Docket No. 12-1.) In her
28 Opposition and supporting Declaration, Plaintiff responds that she is not required to

1 arbitrate her claims because she never opened the 7001 Account, and therefore did not
2 consent to the arbitration agreement. (Docket Nos. 13, 13-1.) Citibank objected to
3 Plaintiff's Declaration because it was undated and purportedly contained legal
4 conclusions. (Docket No. 15.) Nevertheless, it is clear from the face of Plaintiff's
5 Complaint that she alleges she did not open the 7001 Account and thus did not agree to
6 be bound by its terms. (Compl. ¶¶ 26-36.)

7 The Court finds that, based on the Complaint and the competing declarations
8 submitted by the parties, there is a genuine question of fact in need of resolution.
9 Accordingly, the Court shall schedule a trial for resolution of these issues. *See* 9 U.S.C. §
10 4 ("If the making of the arbitration agreement or the failure, neglect, or refusal to perform
11 the same be in issue, the court shall proceed summarily to the trial thereof."). **The Court**
12 **orders the parties to meet and confer and to file a joint proposed trial plan within**
13 **two weeks of the date of this order.** The joint proposed trial plan shall address, *inter*
14 *alia*, whether the trial shall be a jury trial or a bench trial, how long the trial is expected to
15 take, when the parties would prefer trial to be scheduled, and what discovery is needed
16 for trial.

17 CONCLUSION

18 For the reasons set forth above, the Court **DENIES** Defendant Citibank's Motion
19 to File Documents Under Seal, and **DEFERS** ruling on the Motion to Compel
20 Arbitration. As discussed above, within two weeks of the date of this order, the parties
21 shall meet and confer, consult with the Courtroom Deputy regarding available trial dates,
22 and file a joint proposed trial plan to adjudicate the issue of whether Plaintiff consented
23 to the arbitration agreement.

24 **IT IS SO ORDERED.**

25
26 DATED: April 5, 2017

27 
28 HON. ROGER T. BENITEZ
United States District Judge